IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

VILLAGE OF BOLINGBROOK, a municipal corporation,	)	
Plaintiff,	)	
v.	)	Case No. 22 CH 198
RE LAND IL II, INC., an Illinois Corporation,	)	John C. Anderson Circuit Judge
Defendant.	)	

MEMORANDUM OPINION AND ORDER

This case is before the Court on a motion for preliminary injunction filed by Plaintiff and Counter-Defendant, Village of Bolingbrook, against RE Land IL II, Inc. An evidentiary hearing was conducted, and the matter taken under advisement. The Court now finds and orders as follows:

I. PROCEDURAL BACKGROUND

On November 30, 2022, the Village of Bolingbrook filed the instant lawsuit and motion for preliminary injunction seeking injunctive relief against the Defendant pursuant to Section 5/11-13-15 of the Illinois Municipal Code. The Complaint alleges that after Defendant purchased property in the Village previously operated solely as a quarry, Defendant engaged in development and site development as defined by the Village's code without submitting a development plan and without a site development permit; that the Defendant is operating a truck parking business without obtaining a business license from the Village; that Defendant created an off-street parking facility not in compliance with the design requirements of the Village code; that Defendant has provided no fire suppression/mitigation plans to the Village; and there is no fire suppression/mitigation system at the truck parking facility. On December 8, 2022, Defendant filed an answer and affirmative defenses. The answer denies all material allegations and Defendant asserts the affirmative defenses of: 1) the Annexation Agreement/Special Use Permit bars these claims; 2) grandfathering; 3) estoppel; and 4) waiver.

Following an unsuccessful effort to resolve the case amicably, the Court conducted an evidentiary hearing on September 11, 20, 21, and 22, 2023. As discussed in greater detail below, the evidence presented at the hearing established that Defendant violated numerous Village codes and failed to prove any of its affirmative defenses.

II. DISCUSSION

A. Analytical Standards

1. Injunctive Relief

Ordinarily, to justify a preliminary injunction, a party must establish that it: (A) has a clearly ascertainable right in need of protection; (B) will suffer an irreparable injury in the absence of an injunction; (C) has no adequate remedy at law; and (D) has a likelihood of success on the merits of the case. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill.2d 52, 62 (2006).

However, where an injunction is sought by a public official or body pursuant to enforce an ordinance, a public body need not show irreparable harm nor an inadequate remedy at law.[1] See *Vill. of Riverdale v. Allied Waste Transp., Inc.*, 334 Ill. App. 3d 224, 228–29 (2002).

For each element, the plaintiff must raise a fair question that each of the elements is satisfied. *Guns Save Life, Inc. v. Raoul*, 2019 IL App (4th) 190334, ¶ 37. "If these elements are met, then the court must balance the hardships and consider the public interests involved." *Id.*

2. Interpretation of Ordinances

A municipality's zoning ordinance is analyzed in accordance with the rules of strict statutory construction. *La Grange State Bank v. Vill. of Glen Ellyn*, 227 Ill. App. 3d 308, 314 (1992). "Language in zoning ordinances should be interpretated in favor of the free use of property." *City of Chicago Heights v. Old Orchard Bank Trust, Co.*, 96 Ill. App. 3d 789, 794 (1981). Only if the municipality has expressed its intentions in clear and unmistakable terms and after considering the entire ordinance and terminology the municipality elected to use, may the court declare and enforce the law as enacted. *Lubershane v. Vill. of Glencoe*, 63 Ill. App. 3d 874, 878 (1978). However, any ambiguity should be resolved in favor of the landowner and the free use of land. *Id.*; *see also Monat v. County of Cook*, 322 Ill. App. 3d 499, 506 (2001).

B. Failure to Name Necessary Parties

As a threshold matter, RE contends that Bolingbrook failed to name AZ Leasing, AZ Truck Parking, and other corporate entities, subcontractors or third-parties who operate at the property, including the third-parties and individual truck owners and operators who park at the property, are not under the jurisdiction of this Court. The Court agrees with Defendant that the Court has no jurisdiction over those non-party entities. However, the question of whether the Court can still issue injunctive relief against RE is a different matter.

"A necessary party is one whose participation is required to (1) protect its interest in the

[1] If, for the sake of argument, Bolingbrook was required to establish irreparable harm and inadequate remedy of law, the Court would find that Bolingbrook has easily done so. When a landowner or other person is permitted to disregard code and ordinances, and the municipality is unable to enforce its own laws, the municipality suffers irreparable harm without an adequate legal remedy.

subject matter of the controversy which would be materially affected by a judgment entered in its absence; (2) reach a decision protecting the interests of the parties already before the court; or (3) allow the court to completely resolve the controversy." *Certain Underwriters at Lloyd's London v. Burlington Ins. Co.*, 2015 IL App (1st) 141408 ¶ 15. Application of this statute entails a "certain amount of discretion in the trial court" and when a party drags their feet in interposing a nonjoinder objection, "it will receive little favor by the courts" absent a showing that nonjoinder "will have the effect of depriving the party omitted of its legal rights." *See Rhodes v. Davis*, 374 Ill. 65, 70 (1940). Here, the case was filed nearly a year ago, and thus RE's contention is untimely. And, the Court cannot discern any argument or issue the nonentities could raise relative to whether the parking facility complies with Bolingbrook's code requirements. Admittedly, those entities might have causes of action against RE (ignoring for a moment that there is no dispute that RE's owner, Artem Zakharov, is the "AZ" in the AZ-entities), but those potential claims would not trump the village code.

In the Court's view, these unnamed parties are not necessary for the imposition of a preliminary injunction against RE. *See Newco Laundromat Co. v. A L D, Inc.*, 16 Ill. App. 2d 494, 500 (1958) (collecting cases and holding that customers were not necessary parties); *Lanski v. Am. Nat. Bank & Tr. Co. of Chicago*, 122 Ill. App. 3d 729, 732 (1984) (in a case involving building code violations, "tenants *** were not necessary parties as they contend although they have been proper parties had they sought to intervene"); *Nonnenmann v. Lucky Stores, Inc.*, 53 Ill. App. 3d 509, 514 (1977) (in case involving defendant's use of parking lots in violation of zoning restrictions, defendant's tenant was not a necessary party).

C. Satisfaction of the Elements of a Preliminary Injunction

1. Clearly Ascertainable Right in Need of Protection

The Court finds that Bolingbrook has a clear and ascertainable right to have the provisions of its codes and ordinances enforced in order to protect the public's health, safety, and welfare.

2. Likelihood of Success

a. Count I – No Development Plan Review and Approval

Village code Section 30-7 provides that "No person shall commence or cause to be commenced any development within the village corporate limits unless a final development plan has been reviewed and approved by the plan commission or village board ..." (Pl. Ex. 17). The code defines develop or development as "the carrying out of any *construction* or *improvement* or the making of any substantial change in the appearance of any structure" (Pl. Ex. 8). Mr. Eastman, the Village's Director of Community Development, enforces the Village's development and zoning codes. Mr. Eastman testified that, in his view, the creation of a large-scale truck parking facility at the southwest corner of the property constitutes both construction and an improvement which requires a final development plan to be submitted and approved by the Village (9/20, pp. 163-164, 167).

However, the Court finds that the use of the property as a truck parking lot did not entail "construction or improvement or the making of any substantial change in the appearance of the structure." Again, an ordinance must reflect the municipality's intentions in clear and unmistakable terms. *See Lubershane v. Vill. of Glencoe*, 63 Ill. App. 3d 874, 878 (1978). With that principle in mind, the Court cannot find that a change in the use of land is tantamount to a change in the appearance of a structure. Accordingly, the Court finds that Bolingbrook has failed to meet its burden in establishing a reasonable likelihood of success on Count I.

b. Count II – Site Development Without a Permit

The Village code defines site development as "altering terrain or vegetation and constructing improvements." The Village code defines "site development permit" as "a permit issued by the village for the construction or alteration of ground improvements and structures for the control of erosion, runoff and grading" (Pl. Ex. 15). Finally, code section Sec. 16-61 requires a site development permit as follows:

> Except as otherwise provided in this article, no person shall commence or perform any clearing, grading, stripping, excavating, or filling of land which meets the following provisions without having first obtained a site development permit from the department of public works and engineering of the village:
>
> (1) Any land disturbing activity (*i.e.*, clearing, grading, stripping, excavation, fill, or any combination thereof) that will affect an area in excess of 5,000 square feet; ***

(Pl. Ex. 16).

The Village has adequately established that RE engaged in land disturbing activity in violation of section 16-61, and did so without a permit.

c. Count III – No Business License

Village code Section 12-23 provides:

> Sec. 12-23. - License required.
>
> (a) No person shall conduct, engage in, maintain, operate, carry on or manage any business, occupation, activity, non-profit enterprise, or establishment, either by himself or itself, or through an agent, employee, or partner without first having obtained a license for such business, occupation, activity, or establishment.
>
> * * * *

(c) A license or permit is required for the maintenance, operation, or conduct of any business or establishment, or for doing business or engaging in any activity or occupation. Any person shall be subject to the requirement if, by himself, herself, or itself, or through an agent, employee, or partner, he, she, or it is held forth as being engaged in the business, activity, or occupation, or if he, she, or it solicits patronage therefor, actively or passively, or if he or it performs or attempts to perform any part of such business, activity, or occupation in the village.

(Pl. Ex. 11).

The Village has established that all businesses in the Village are required by Village code to obtain a business license, that a truck parking business is being operated at the subject property by or on Defendant's behalf, and that no business license has been requested or issued for a truck parking business (9/20, p. 148-150). Accordingly, Bolingbrook has established that it is likely to prevail on Count III.

d. Count IV – Compliance with Off-Street Parking Requirements

Defendant's truck parking lot violates the Village's design standards for off-street parking. The Village has established that its ordinances require certain specific design requirements for off-street parking facilities. Those design standards are found in Section 54-533, which provides:

Sec. 54-533. - Design and maintenance.

* * * *

(c) Surfacing. Every parking space, including access thereto, shall have an all-weather, dust-free surface and shall be so graded and drained as to dispose of surface water accumulation by means of a positive stormwater drainage system connected to a public drainageway. (Village Ex. 12).

i. No all-weather dust-free surface

It is undisputed that the surface of the parking lot is comprised of asphalt grindings, and Mr. Eastman credibly testified that asphalt grindings do not constitute an all-weather dust-free surface (9/20, p. 153). Mr. Zakharov's belief that asphalt grindings constitute a dust-free surface is not only self-serving, but irrelevant. Mr. Eastman, and not Mr. Zakharov, is charged with the administration and enforcement of the Village's zoning codes, and Mr. Eastman testified, credibly, that an all-weather dust free surface means hot asphalt, concrete, or brick (9/20, p. 152). "A court will give substantial weight and deference to an interpretation of an ambiguous statute by the agency charged with the administration and enforcement of the statute. Such an interpretation expresses an informed source for ascertaining the legislative intent. A significant reason for this deference is that an agency can make informed judgments upon the issues, based on its experience and expertise." *Peterson Plaza Pres., L.P. v. City of Chicago Dept. of Fin.*, 2019 IL App (1st) 181502, ¶ 17, citing *Bonaguro v. County Officers Electoral Board*, 158 Ill. 2d 391, 398 (1994). Moreover, Mr. Eastman credibly testified that asphalt grindings are not dust free (9/20, p. 153). His testimony was corroborated by the testimony of the Plainfield residents, Ms. Adler,

who testified that she sees clouds of dust emanating from the truck parking facility on a regular basis (9/11, p. 193), and Mr. Arford, who testified that the truck parking lot raises concerns about dust and pollution (9/11, p. 172). Ms. Adler and Mr. Arford live across the street from the property and observe it on a regular basis (9/11, p. 193; 170-171). Their testimony was credible.

Thus, the evidence established that the property is being used for off-street parking which does not comply with Section 54-533 because it is not paved with hot asphalt, concrete, or brick.

ii. Curbing

It is undisputed that the off-street parking facility does not have any curbing. Curbing provides the important function of containing the vehicles that are on site (9/20, p. 153).

iii. Lighting

Section 54-533 also requires that "Lighting used to illuminate off-street parking areas shall be provided as required in section 30-173." (Pl. Ex. 12). It is undisputed that there is no lighting at all servicing the truck parking lot and that the Defendant never submitted a photometric plan to the Village as required by Section 30-173(f)(6). The lack of lighting pursuant to a photometric plan creates significant safety issues.

iv. Permanent vs. Temporary

At the hearing, Defendant asserted that it is not required to comply with Section 54-533 because the parking lot is "temporary" (9/22, pp. 158, 179). By Defendant's circular reasoning, Defendant gets to decide when its parking lot becomes a parking lot subject to regulation and that the truck parking lot is not subject to regulation until it is properly paved. Under this logic, Defendant could essentially operate the truck parking business in a non-compliant state and evade the code requirements indefinitely *because* it does not conform to code requirements. Further, Mr. Zakharov's testimony on this issue was not credible. He testified that he would never have purchased the property if he believed he would be required to comply with Section 54-533 (9/22, p. 182). In other words, Defendant has suggested that, unless legally obligated, he will never construct off-street parking compliant with Section 54-533.

e. Count V – Lack of Safety Systems

1. Lighting

Section 54-533 requires that off-street parking shall have lighting in compliance with Section 30-173 of the Village Code. As explained by Mr. Eastman, the subject property is required to comply with subsection (f), including subsection (f)(6). Subsection 30-173(f)(6) requires that a developer/owner submit a photometric plan to the Village for review and approval. It is undisputed that Defendant did not do this and, as discussed below, the previous lack of lighting at the property does not mean that Defendant is permitted to disregard these requirements given the change in use of the property.

2. Fire Safety System

Because the subject property was annexed while used solely as a quarry, it is not serviced by a municipal water supply and there are no fire hydrants (9/11, p. 66). Water supply is critical for fire suppression (9/11, p. 70-71). Fire Chief LaJoie explained the importance of fire suppression systems when there are a large number of trucks carrying diesel fuel and there is no way to govern what, if anything, is stored inside the trucks (*Id.* at 72). While it may be true that a fire at the truck parking lot would not spread to the neighboring Plainfield residential properties, the same cannot be said of the byproducts of such a fire. This Court can and should take judicial notice based on common sense and everyday experience that massive, toxic fires happen on a regular basis, and that it takes just one careless act to set off a tragic chain of events culminating in toxic releases which endanger neighboring communities. Mr. Zakharov admitted that Defendant does not police or regulate the contents of the trailers stored at the property and, moreover, the trucks can contain virtually anything that can be transported by truck (9/20, pp. 93-94, 143; 9/22, p. 169). And, while Dale Wheeler testified that the risk of fire is low, that is not a justifiable basis to disregard fire safety measures.

Chief LaJoie explained that the procedure for determining the appropriate fire safety needs is for the owner to bring plans to the Village for assessment by the Village. (9/11, pp. 63-65). The Village does not design fire safety systems; rather, it evaluates them when submitted (*Id.*). That never happened in this case (*Id.* at 66-68). The use of the property has changed substantially since Defendant purchased the property (*Id.* at 69-70). Hundreds of trucks and trailers which can be filled with virtually anything are parked and stored at the property, despite the complete lack of an approved fire suppression system. Bolingbrook is justified in requiring a fire suppression system as part of its police power.

f. Defendant's Affirmative Defenses

Relative to RE's affirmative defenses, the Court finds there is no basis to conclude that RE is likely to succeed.

i. Annexation Agreement

Defendant cannot rely on the annexation agreement's prohibition on enforcing its "building, health, safety, zoning and fire codes until such time as improvements and repairs are made" to the property. The Court finds that RE's grading, elevation changes, and other work constitutes "improvements and repairs" to the property that are sufficient to justify the Village's efforts to enforce its building, health, safety, zoning, and fire codes.

ii. Grandfathering and Waiver

Any reliance by Defendant on past uses at the properties south of 135th Street must be rejected. The evidence clearly established that the east portion of the property south of 135th Street was sold in 2015 and the west portion was sold in 2018 (9/22, p. 94-95). The right to a

legal nonconforming use is lost when the use is not continuous, and a municipality has the authority to determine the duration of the discontinuance of use through its ordinances. *See City of Chicago v. Cohen*, 49 Ill. App. 3d 342, 345 (1977). Bolingbrook Code Section 54-869 provides that "When a nonconforming use of land ...is discontinued or abandoned, for a period of two consecutive months (regardless of any reservation of an intent not to abandon or to resume such use), such use shall not thereafter be re-established or resumed. Any subsequent use or occupancy of such land shall comply with the regulations of the zoning district in which such land is located." Therefore, any uses at those south properties, which were not present at the north property in 2018, do not grandfather as to the north property.

Likewise, RE's argument that the work performed at the southwest portion of the property is a continuation of activity performed by the previous owner is without merit. Defendant's own witnesses undermine Defendant's assertion. Defendant's witness, Mr. Hamman, whose company owned the property for nine years prior, testified that during H & H's tenure, H & H only added fill to the southwest portion of the property and referred to that part of the property as his "fill area" (9/22, p. 112-13). As a quarry owner, he had the right to fill the area (9/22, pp. 18, 112); however, H & H was not building anything specific (Ex. 5; 9/22, pp. 121-22). Instead, it simply created a generic flat area for potential subsequent development and use (*Id.*). The Village has no standards for the manner in which a quarry operator fills a quarry (*Id.*). H & H never really used the southwest portion of the property for anything (9/22, p. 116; 118). After he sold the property, however, he built a truck parking lot for Defendant (9/22, p. 110). Another defense witness, Mr. Duggan, counsel for H & H, who claims to be extremely familiar with the subject property, confirmed that he characterized the work performed at the southwest portion of the property after the sale to Defendant "construction work" (9/21, p. 262). Moreover, it is transparently obvious that the scheme to have H & H pay outside contractors, and then receive reimbursement from Mr. Zakharov, was conceived by Mr. Zakharov (9/22, p. 109) to create *the illusion* that the site development activity was nothing more than H & H continuing to do what it had done during the nine years it owned the quarry property. Mr. Hamman's testimony further contrasted the difference between the fill activity during his ownership and the site development work performed in November and December 2022. In November and December 2022, Defendant spent hundreds of thousands of dollars to modify the grade and elevation of the subject location, raising the elevation by 3 feet (9/22, p. 99), whereas during H & H's ownership of the quarry, it never used outside contractors to fill the southwest portion of the property (9/22, p. 103). Mr. Hamman testified that the work performed during November and December 2022 constituted an acceleration and possibly a *significant* acceleration of previous activity (9/22, p. 113). Finally, unlike the previous fill activity, the truck parking lot constructed in late 2022 has no nexus to the quarry operations; whereas during H & H's tenure, virtually everything it did at the property was related to the quarry operation, as it was authorized to do pursuant to the special use permit (9/22, p. 116; 128).

Similarly, the fact that H & H parked and stored its quarry trucks and equipment on flat areas within the quarry lacking curbing and drainage does not "grandfather" the new use of the southwest corner as a semi-truck parking lot. The special use permit specifically permitted the owner to engage in "the extraction of minerals, sand, gravel, topsoil or other aggregates ... and the operation and construction of all buildings, structures and equipment necessary to

accomplish the foregoing shall be permitted." (Pl. Ex. 5). Mr. Hamman testified that the previously created parking pads were necessary for the quarry operations and conceded that the new truck parking lot has no connection to the quarry (9/22, p. 111-112).

Likewise, any argument that the Village waived the development and site development requirements fails. "Waiver arises from an affirmative act, is consensual, and consists of an intentional relinquishment of a known right." *Home Insurance Co. v. Cincinnati Insurance Co.*, 213 Ill.2d 307, 326 (2004). Defendant's waiver defense that "the Village has never issued any citations or cited H&H for the alleged conditions for which it now complains" must be rejected because the evidence established that none of the conditions or conduct alleged in the Complaint existed prior to the sale of the property to Defendant. There was no off-street parking facility for over the road semi-trucks, and H & H was not engaged in site development. As a quarry operator, H & H was permitted to add fill to its property so long as it was not actually constructing anything specific (9/20, p. 177). To the extent Defendant relies on evidence that H & H previously created parking pads for its own equipment and once permitted Precision Pipeline vehicles to be stored at the property, Defendant produced no evidence that the Village even knew that H & H did these things. Mr. Eastman testified that when he toured the quarry property in June 2022, he did not see or notice any parking pads in the quarry (9/20, p. 177). Mr. Hamman testified that he never informed the Village that he created the previous parking areas (9/22, p. 115). On the one occasion when H & H allowed non-quarry related vehicles (Precision Pipeline) to park on the property, those vehicles were parked out of sight near the rear of the quarry, and Mr. Hamman did not notify the Village that this occurred. (9/22, p. 122-23).

iii. Estoppel

Defendant has also failed to introduce any persuasive evidence to establish estoppel. Illinois courts have long held that equitable estoppel may apply against municipalities only in extraordinary and compelling circumstances. *Patrick Eng'g, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 35. The act inducing reliance "must be affirmative, but may be either an act by the municipality itself, such as legislation, or an act by an official with express authority to bind the municipality." *Id.* Mr. Eastman credibly testified that in September 2022, he advised Mr. Zakharov that he would need to comply with Section 54-533 (9/20, p. 154). On the other hand, Mr. Zakharov testified that, at most, in September 2022, the Village did not expressly advise him that he could not park trucks at the property (9/20, p. 41). Even if true, this is a far cry from an affirmative act by an official with express authority to bind the Village which would be necessary to establish estoppel.

iv. The Special Use Permit

The special use permit does not permit the large-scale parking and storage of over the road semi-trucks unrelated to quarrying on a non-compliant surface without curbing, lighting and drainage. In *Palella v. Leyden Fam. Serv. & Mental Health Ctr.*, 79 Ill. 2d 493, 500 (1980), neighboring property owners filed suit under Section 11-13-15 seeking to enjoin the operation of a "nonmedical detoxification center" by defendants. The property had been used as a nursing home pursuant to a special use permit which provided: "petitioners shall be permitted to operate

a private nursing and convalescent home on the premises herein described. Said nursing and convalescent home shall not be converted to a hospital, nor to an institution for the care of the insane or feeble minded, but shall continue to operate under a special use permit under the same or similar conditions to those existing at the time of the annexation ..." *Palella,* 79 Ill. 2d at 495. A portion of the property was subsequently converted for use as a nonmedical detox center. The Illinois Supreme Court affirmed the injunction and the trial court's determination that "it is clear that there is no similarity between the operation of the facility as a convalescent or nursing home under the permitted special use permit and the operation of a detoxification center." Likewise, in this case there is no similarity between the quarry operations allowed by the special use permit and the operation of a commercial semi-truck parking facility, and Defendant's reliance on the special use permit issued for a quarry is misplaced.

Likewise, because the previous use of the property as a quarry was dissimilar to the present use as a semi-truck parking facility, Defendant's argument that the Village never required H & H to install lighting is meritless. The evidence revealed that the quarry hours of operation resemble business hours, while the truck parking business is a 24/7 operation (9/11, p. 173; 197). Hundreds of invitees now have 24/7 access to the property which was not the case when the property was used solely as a quarry. Next, common-sense dictates that unlike quarry goods (rocks) and machinery, a large number of unattended semi-trailers in a location with no lighting is attractive to criminals, and code compliant lighting serves to deter criminality at the subject property. Finally, as discussed further below, lighting is important for first responders (including EMS, police, and fire) in the event they need to quickly provide aid at the property. Defendant ignores all these considerations and simply pretends that there is no difference between the prior quarry operations and the new and completely different operation of the truck parking facility.

When asked about whether Defendant requested a business license, Mr. Zakharov testified that H & H did not have a business license (9/20, p. 91). It is difficult to comprehend the legal significance of such an assertion. H & H is a completely separate entity and operated a completely different business: a quarry. Defendant operates a truck parking business. Defendant's attempt to rely on H & H's lack of a business license to establish grandfathering, estoppel or waiver must fail. There is no nexus between these businesses.

Further, the evidence presented at the hearing establishes that quarry operations are licensed and governed by state law, (9/20, p. 198; 9/21, pp. 160-161, 171, 230; 9/22, p. 16, 19, 92) and under the Village code, businesses licensed by the state of Illinois are exempted from the business license requirement:

> Business means any vocation, occupation, profession, establishment, concern, or enterprise, together with all devices, machines, equipment, vehicles, and appurtenances used therein, as generally described in the village fee schedule *except those occupations or professions licensed exclusively by the state or instrumentally thereof.* In addition, where two or more separate businesses, by the above definition, separately owned or operated, share floor space in the same building or on the same parcel of ground and the floor space is subdivided, then each shall be deemed a separate business and shall be

required to obtain a separate business certificate based on the floor area each separately uses.

(Village Code Chapter 12, Article 1).

Defendant elicited testimony that if Defendant sought a business license, the Village would not issue one due to Defendant's non-compliance with Section 54-533 (9/21, p. 91). Futility is not one of Defendant's affirmative defenses and the likelihood that a business license would not issue upon application does not excuse Defendant from complying with this requirement, and the likelihood that the Village would not issue a license under these circumstances most certainly does not mean that Defendant can simply proceed to engage in a business without a business license.

3. Balancing Hardships

The parties disagree on whether the Court ought to balance the hardships. Typically, a court considering injunctive relief ought to balance the equities. *Cnty. of Kendall v. Rosenwinkel, 353 Ill. App. 3d 529, 539–40 (2004)*. This is true even when the traditional elements necessary to justify an injunction are supplanted by a statute expressly authorizing the State or governmental agency to seek injunctive relief. *Id.* However, where an encroachment is deliberate, the court may issue a mandatory injunction without weighing the relative hardships. *Id.* Thus, a court may, but need not, balance the equities before enjoining an intentional zoning ordinance violation.

The Village contends that the Court should decline to weigh the hardships because any negative consequences to RE are self-inflicted. Indeed, the Village has advised RE more than once that Defendant needed to comply with all applicable codes and ordinances, and RE still moved ahead with its plans. Bolingbrook further argues that Defendant's decision to continue creating the parking facility—with full awareness that the Village viewed the site development and operation of the truck parking business with a non-compliant design as violations of the Village's Code—precludes it from complaining about the consequences of its own actions.

The Court rejects Bolingbrook's argument that it should not weigh the hardships. And, to be sure, RE would suffer great financial hardship if an injunction were to issue. Still, there is a difference between not weighing the relative harm *at all*, and weighing the harm while still recognizing that RE undertook substantial risk in placing itself in its current position.

And, the Court rejects RE's argument that neither the community nor Bolingbrook would incur harm if the Court denied the preliminary injunction motion. Regarding the community, the Court heard credible testimony from neighbors that the parking operations cause substantial dust, noise, vibration, and visual blight. As for the Village, the inability to enforce its own codes and ordinances is enormously consequential, both in this case and in any other situation where a party has disregarded local laws.

At bottom, the balancing of hardships basically comes down to a slight tilt in Bolingbrook's favor, with the Court discounting the harm to RE because its problems are largely of RE's own making. Further, the stay issued in this case (see below) serves as a safety measure to protect

Defendant's interests.

D. Stay

Given the extraordinary relief granted to the Village and the potential hardship to Defendant, the Court wishes to ensure that RE has a meaningful opportunity to seek relief in the appellate court. As a matter of law, a trial court has "inherent authority to act *sua sponte*" (*Circle Management, LLC v. Olivier*, 378 Ill.App.3d 601, 614 (2007)) and "may stay proceedings as part of its inherent authority to control the disposition of cases before it" (*Estate of Bass ex rel. Bass v. Katten*, 375 Ill.App.3d 62, 68 (2007)). *See also Estate of Lanterman v. Lanterman*, 122 Ill.App.3d 982, 990 (1984) (finding no error in a *sua sponte* stay, and finding that the trial court has inherent authority to stay its own orders as part of its inherent power to control the disposition of cases before it).

In granting a very short stay, the Court has considered the requirements of *Stacke v. Bates*, 138 Ill.2d 295, 309 (1990). Per *Stacke*, a party is not required to show a probability of success on the merits, but must at least present a substantial case on the merits and show that the balance of the equities weigh in favor of granting the stay. *Stacke*, 138 Ill.2d at 309. With respect to a substantial case on the merits, the court looks to "the movant's likelihood of success on the merits." *Id.* With respect to equitable factors, the court may consider "whether a stay is necessary to secure the fruits of the appeal in the event the movant is successful" and whether hardship on other parties would be imposed. *Id.* at 305–09. "If the balance of the equitable factors does not strongly favor movant, then there must be a more substantial showing of a likelihood of success on the merits." *Id.* at 309. In addition, the circuit court has discretion to consider factors such as the "orderly administration of justice and judicial economy," as well as its inherent authority to control the disposition of the cases before it. *Estate of Bass*, 375 Ill.App.3d 62, 68 (2007); *Philips Electronics, N.V. v. New Hampshire Ins. Co*, 295 Ill.App.3d 895, 901–02 (1998). The Court does not perceive a high probability of success on appeal. However, by issuing a short-term stay, the Court preserves the fruits of an appeal that may otherwise be lost. In other words, even though the balance of the equities does not weigh against the imposition of a preliminary injunction, the same equities weigh in favor of a short-term stay to permit RE an opportunity for meaningful appellate review.

The stay shall remain in place until December 21, 2023, and shall automatically dissolve at noon on that day. Any request to extend the stay will be disfavored absent extraordinary circumstances. In the interim, RE will have sufficient opportunity to seek emergency relief in the appellate court. If that court takes a different view and concludes that Defendant has a likelihood of success, or that the stay ought to remain in place so that the appellate court has adequate time to consider the case, the appellate court obviously has the power extend the stay if it so chooses.

III. CONCLUSION

In conclusion and for the foregoing reasons, the Court finds that Bolingbrook has met its burden, at this preliminary stage of the case, in establishing that it has a likelihood of success in

showing that RE violated various sections of the Village code, and that it did so without good faith or good cause. Bolingbrook's request for a preliminary injunction is granted.

Defendant is ordered to refrain from using the property as a truck parking lot in violation of the Village code (stayed until December 21, 2023, as stated above). Defendant shall return the use and condition of the property to the last, actual, peaceable, uncontested status preceding the controversy (which is the use and condition of the property prior to November 17, 2022, when the Village issued a stop work order), by February 20, 2024. The case is set for status on February 27, 2024, at 9AM. All other dates are stricken. All counsel are notified via email.

ENTERED:

John C. Anderson
Circuit Judge

Dated: November 16, 2023